

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION**

KALEIDA HEALTH¹

Employer

and

Case 3-UC-508

**COMMUNICATION WORKERS OF
AMERICA, LOCAL 1168²**

Petitioner

**DECISION AND ORDER CLARIFYING UNITS, IN PART
AND DISMISSING PETITION, IN PART**

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,³ I find:

The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

The parties stipulated that the Employer operates a not-for-profit health care system located in western New York. The parties also stipulated that annually, the Employer, in conducting its business operations, derives gross revenues in excess of \$250,000, and purchases

¹ The Employer's name appears as amended at the hearing.

² The Petitioner's name appears as amended at the hearing.

³ Post-hearing briefs were filed by the Employer and Petitioner and have been duly considered.

and receives at its western New York facilities, goods and services valued in excess of \$50,000, directly from points located outside of the State of New York. Based on the parties' stipulation and the record as a whole, I find that the Employer is engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

The Employer operates a health care system, which consists of hospitals, long-term care facilities, clinics and other facilities in western New York. The Petitioner represents registered nurses ("RNs") and other employees employed by the Employer in eight bargaining units at its Buffalo General,⁴ Degraff Memorial⁵ and Millard Fillmore⁶ Hospitals. Eight separate collective-bargaining agreements, covering the units, are effective from December 1, 2000 through May 31, 2005.

The sole issue herein is whether Petitioner's RN units at Buffalo General and Millard Fillmore Hospitals should be clarified to add the Quality Documentation Coordinator ("QDC").⁷ There are eight employees in the QDC classification.

Petitioner contends that clarification is warranted because QDCs and RNs share an extensive community of interest. The Employer contends that clarification is inappropriate

⁴ Petitioner represents RN, technical/clinical-clerical and professional units at this facility.

⁵ Petitioner represents RN and technical/clinical-clerical units at this facility.

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⁷ The Petitioner also sought to clarify the Buffalo General Hospital and Millard Fillmore Hospital RN units to add all renal and pancreas transplant nurses (six employees) and department of neurology research nurses (including nurse practitioners)(two employees). At the close of the hearing, the parties stipulated that these classifications should be added to the above RN units. Based upon the parties' stipulation and the record as a whole, I find that the RN units should be clarified to add these classifications.

because: (1) QDCs and RNs share an insufficient community of interest; (2) QDCs are managerial employees; and (3) QDCs cannot be accreted to an all-RN unit because being an RN is not a job requirement for a QDC.

The Employer created the QDC position in July 2003. QDCs advise physicians at Millard Fillmore and Buffalo General Hospitals concerning methods to improve patient charting. The QDC title was created after the Employer learned that it was under-charting patient acuity levels, which resulted in the Employer being under-reimbursed for the care that it provided. The Employer created the QDC position, with the hope that QDCs would alert physicians to certain charting shortfalls, persuade them to modify patient charts and thus, increase the revenue that the Employer receives from its third-party payers.⁸

A QDC is not required to be an RN. A QDC does not provide direct or indirect patient care. The QDC job description does not require RN licensure but requires, “knowledge of documentation opportunities, clinical documentation requirements, policies and procedures.” The Director of Performance Improvement, who indirectly supervises QDCs, testified that a QDC does not have to be an RN and that a variety of non-RNs such as physicians, therapists or other health care professionals could function as QDCs. Similarly, the Director of Quality Documentation, who directly supervises QDCs, testified that QDCs do not have to be RNs and that non-RNs such as physicians, physician’s assistants, licensed practical nurses, respiratory

⁸ A patient’s chart is ultimately used by Coders to assign a final diagnostically-related grouping (“DRG”) to the treatment that the patient received. DRGs are the basis for the reimbursement that the Employer receives from third-party payers such as insurers, Medicare and Medicaid. Accordingly, if a patient’s chart fails to adequately describe the patient’s acuity, the final DRG will similarly under-describe a patient’s acuity and result in diminished reimbursement.

therapists and any other individual with sufficient clinical expertise could ably function as QDCs.⁹

All current QDCs are RNs. The Employer's explanation for this fact is that QDCs and RNs are paid comparable wages, RNs are qualified to be QDCs, and QDCs, unlike RNs, do not work weekends, evenings, nights or holidays.

QDCS do not hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline employees. QDCs do not attend supervisory or management meetings.

QDCs do not exercise managerial discretion. QDCs do not create or modify Employer policies. Although QDCs lobby physicians to modify charting, they have no control over whether their advice is taken. QDCs do not assign final DRGs to patients. Only Coders, who possess a specialized certification, can assign a final DRG. Similarly, the Director of Quality Documentation reviews and approves any written communications that QDCs distribute to physicians.

QDCs and RNs have different supervision. QDCs report to the Quality Documentation Director, while RNs report to Nurse Managers.

QDCs regularly interact with RNs, physicians and other health care professionals. A QDC's typical workday entails reviewing patient charts with the goal of maximizing third-party reimbursement; consulting with RNs and other health care professionals to understand courses of treatment; and advising physicians about charting deficiencies. The Director of Quality Documentation testified that:

⁹ Although a QDC testified that she was told during her job interview that an applicant had to be an RN in order to be a QDC, this representation during the interview process is insufficient to overcome both the fact that the QDC job description does not require that such employees be RNs, or the testimony of Employer representatives that RN status is not required. Moreover, the Petitioner, in its brief concedes that RN status is not required either by the QDC job description or to fill the job.

[T]heir primary duty is to review the charts to make sure that the physician or nurse practitioner documentation is complete and appropriate ... a large portion of their job is physician education, talking with the physicians ... to explain the program and why the documentation is important and how it benefits the program and hospital....

They are [assuring] that the information is completed accurately and in the appropriate wording that we need, that the third party payer, the insurance company is looking for [for reimbursement purposes].

QDCs are paid slightly less than unit RNs with comparable levels of seniority. Unlike unit RNs, QDCs are salaried. QDCs receive different health, dental and vision benefits than unit RNs.

While, theoretically, RNs and QDCs would appear to be interchangeable, given that all current QDCs are RNs, in practice, they do not interchange in their job duties and responsibilities. To date, the Employer has never assigned QDC work to a unit RN, or unit RN work to a QDC.

QDCs begin their positions with a three-week orientation that is provided by Price Waterhouse, a health care consultant. The Employer's unit RNs do not receive this orientation. During their orientation, QDCs learn how to properly review charts and propose charting changes to physicians.

QDCs perform tasks which are similar to the Employer's patient management coordinators ("PMCs"). PMCs are required to be RNs and are included in the RN units. PMCs were previously called Utilization Review Coordinators and spend the bulk of their time performing discharge planning and utilization management tasks. In this capacity, similar to QDCs, PMCs spend a substantial portion of their workday reviewing charts, analyzing third-party reimbursement issues and interacting with a patient's direct care team. Similar to QDCs, PMCs perform little, if any, direct patient care. Petitioner's lead witness, a Union representative

specializing in the RN units at issue, testified that PMCs and QDCS perform analogous duties. In addition, in its post-hearing brief, Petitioner argued that “the Quality Documentation Coordinator performs nursing functions the same as the former bargaining unit RN Utilization Review Coordinator.”

The Board generally will not clarify a bargaining unit during the term of a collective-bargaining agreement when the objective is to change the composition of a contractually agreed-upon unit by the exclusion or inclusion of employees. See, e.g., *Edison Sault Electric Co.*, 313 NLRB 753 (1994); *San Jose Mercury*, 200 NLRB 105 (1972). However, a bargaining unit may be clarified during the term of a collective-bargaining agreement where the procedure is invoked to determine the unit placement of employees performing a new operation or where an existing classification has undergone recent, substantial changes. See, e.g., *Union Electric Co.*, 217 NLRB 666, 667 (1975); *Crown Cork & Seal Co.*, 203 NLRB 171 (1973). Given that QDCs perform a new operation and their position was created during the term of the 2000 – 2005 contracts, the clarification petition is clearly timely. However, clarification of the QDCs is not warranted. In *Salem Hospital*, 333 NLRB 560 (2001), the Board expressly held:

Although the Board has not included all RNs in a hospital RN unit regardless of function, the Board generally has included in RN units those classifications which perform utilization review/discharge planning work where an employer requires ... RN licensing *Pocono Medical Center*, 305 NLRB 398 (1991); *Middletown Hospital Assn.*, 282 NLRB 541, 578 (1986); *Frederick Memorial Hospital*, 254 NLRB 36 (1981); and *Trustees of Noble Hospital*, 218 NLRB 141 (1975). In cases where utilization review/discharge planners were not required ... to be RNs, the Board has excluded them from the RN unit. *Charter Hospital*, 313 NLRB 951, 954 (1994); *Ralph K. Davies Medical Center*, 256 NLRB 1113, 1117 (1981); and *Addison-Gilbert Hospital*, 253 NLRB 1010, 1011-1012 (1981). For where RN licensing is not a job requirement, it must be concluded that RN education and training is not necessary to perform the job's functions. Thus, the Board, on a case-by-case basis, consistently and repeatedly has determined unit placement of utilization review/discharge planners based on the requirement of an RN license. [Emphasis added].

I have concluded that the QDCs, who perform functions analogous to those of the non-RN utilization review/discharge planners in *Salem Hospital*, supra, cannot be added to the extant RN units because RN licensure is not a requirement of being a QDC. In contrast, the Employer's unit PMCs, as noted above, are required to be RNs.

Accordingly, I reject Petitioner's assertion that QDCs should be accreted to the RN unit because the Board has previously placed RNs who perform patient care in the same unit with RNs who do not do so. The instant case is distinguishable from the cases relied on by the Petitioner because a QDC is not required to be an RN. Although QDCs perform work similar to that of utilization review/discharge planners, such classifications require the employees to be RNs and they are thus included in RN units. Accordingly, the precedent relied upon by the Petitioner is inapplicable and solely controls the placement of RNs who perform patient care with utilization review RNs who do not do so. See, e.g., *The Trustees of Noble Hospital*, supra, 218 NLRB at 1444-45 (placing utilization review coordinators, who were required to be licensed RNs with two years of nursing experience, in an overall RN unit).

Accordingly, I find that the RN units should not be clarified to include the QDC position because QDCs are not required to be RNs. Accordingly, it is not necessary to consider the other bases asserted by the Employer for excluding QDCs from the units. However, based upon the parties' stipulation and the record evidence, the RN units at Buffalo General and Millard Fillmore Hospitals are hereby clarified to include all renal and pancreas transplant nurses, and department of neurology research nurses (including nurse practitioners).

CLARIFIED UNITS

BUFFALO GENERAL HOSPITAL RN UNIT

Inclusions: All full-time, part-time and per diem registered nurses employed by the Employer at its Buffalo General Hospital, 100 High Street; The Deaconess Center, 1001 Humboldt Parkway; Columbus Community Healthcare Center, 300 Niagara Street; The Deaconess Family Planning Center, 590 Riley Street; Amherst General, 4955 North Bailey Avenue; Community Mental Health Center, 80 Goodrich Street; Buffalo General Hospital Alcoholism Clinic, 110 West Main Street in the following classifications: Ambulatory Care Nurse; Behavioral Health Nurse; Clinical Nurse Educator; Clinical Nurse Specialist; Critical Care Nurse; Department of Neurology Research Nurses (including Nurse Practitioner); Enterostomal Therapist; Infection Control Practitioner; Interventional Nurse; Medical Surgical Staff Nurse; Nurse Counselor; Nurse Practitioner; Nutritional Support Nurse; Patient Care Coordinator; Renal and Pancreas Transplant Nurse; RN First Assistant Nurse; Special Procedure Nurse; Staff Nurse SNF; Surgical Service Nurse; and Triage Nurse.

Exclusions: All other employees including but not limited to Registered Nurses who work in Associate Health, Human Resources or Risk Management; Nurse Managers; Associate Nurse Managers; Administrative Nurse Managers; Quality Documentation Coordinators; Non-Nurse Professional Employees; Technical Employees; Office Clerical Employees; Guards and Supervisors.

MILLARD FILLMORE HOSPITAL RN UNIT

Inclusions: All full-time, part-time and per diem registered nurses employed by the Employer at its Millard Fillmore Hospital, 3 Gates Circle; Upper West Side Family Health Center, 135 Grant Street; Hertel Elmwood Internal Medical Center, 699 Hertel Avenue; Millard Fillmore Suburban Hospital, 1540 Maple Road; Louis Lazar Family Medicine Center, 1542 Maple Road; Millard Fillmore Ambulatory Surgery Center, 215 Klein Road; Millard Fillmore Suburban Spine and Rehab, 115 Flint Road; Millard Fillmore Neuro-Rehab Center, 716 Maple Road; Lancaster Primary Care, 4711 Transit in the following classifications: Ambulatory Care Nurse; Certified Nurse Midwife; Clinical Nurse Educator; Clinical Nurse Specialist; Critical Care Nurse; Department of Neurology Research Nurses (including Nurse Practitioner); Interventional Nurse; Nurse Practitioner; Obstetrical Nurse; Patient Care Coordinator; Renal and Pancreas Transplant Nurse; RN First Assistant; Research Nurse; Special Procedure Nurse; Medical Surgical Nurse; Staff Nurse SNF; and Surgical Service Nurse.

Exclusions: All other employees including but not limited to Registered Nurses who work in Associate Health, Human Resources or Risk Management; Nurse Managers; Associate Nurse Managers; Administrative Nurse Managers; Quality Documentation Coordinators; Non-Nurse Professional Employees; Technical Employees; Office Clerical Employees; Guards and Supervisors.

ORDER

IT IS HEREBY ORDERED that the unit clarification petition herein be, and it hereby is, dismissed in part and granted in part.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 Fourteenth Street, NW, Washington, DC 20570. This request must be received by the Board in Washington by **January 25, 2005**.

DATED at Buffalo, New York this 11th of **January 2005**.

CHARLES J. DONNER,
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